IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA

MACON COUNTY INVESTMENTS, INC.; REACH ONE; TEACH ONE OF AMERICA, INC.,	)	
PLAINTIFFS,	)	
v.	)	**CIVIL ACTION NO.: 3:06-cv-224-WKW**
SHERIFF DAVID WARREN, in his official capacity as the SHERIFF OF MACON COUNTY, ALABAMA,	)	
DEFENDANT.	)	

MOTION TO INTERVENE

COME NOW the Tuskegee Macon County YMCA, the Little Texas Volunteer Fire Department, Inc., the Macon County Healthcare Authority, the Macon County RSVP Council, Inc., Macon Russell Community Action Agency, Inc. and the City of Tuskegee, Alabama, (hereinafter "Licensed Charities"), by and through counsel, and respectfully requests this Honorable Court for an Order allowing them to intervene in this action as a party defendant pursuant to Rule 24, *Federal Rules of Civil Procedure*. As grounds for said motion, the Licensed Charities would show unto this Court as follows:

1. Tuskegee Macon County YMCA is an association licensed to operate Class B bingo in Macon County, Alabama and a nonprofit organization as that term is defined by Amendment 744 to the Constitution of Alabama and the Rules and Regulations for the Licensing and Operation of Bingo Games in Macon County, Alabama, as amended ("Macon County Bingo Rules").

2. Little Texas Volunteer Fire Department, Inc. is an Alabama Corporation licensed to operate Class B bingo in Macon County, Alabama and a nonprofit organization as that term is defined by Amendment 744 to the Constitution of Alabama and the Macon County Bingo Rules.

3. Macon County Healthcare Authority is an entity licensed to operate Class B bingo in Macon County, Alabama and a nonprofit organization as that term is defined by Amendment 744 to the Constitution of Alabama and the Macon County Bingo Rules.

4. Macon County RSVP Council, Inc. is an Alabama Corporation licensed to operate Class B bingo in Macon County, Alabama and a nonprofit organization as that term is defined by Amendment 744 to the Constitution of Alabama and the Macon County Bingo Rules.

5. Macon Russell Community Action Agency, Inc. is an Alabama corporation licensed to operate Class B bingo in Macon County, Alabama and a nonprofit organization as that term is defined by Amendment 744 to the Constitution of Alabama and the Macon County Bingo Rules.

6. The City of Tuskegee, Alabama is a municipal corporation licensed to operate Class B bingo in Macon County, Alabama and a nonprofit organization as that term is defined by Amendment 744 to the Constitution of Alabama and the Macon County Bingo Rules.

7. The Licensed Charities hold current Class B bingo licenses for the operation of bingo games in Macon County, Alabama duly issued by the Sheriff of Macon County. As such, the Licensed Charities have an interest relating to the subject matter of this action and are so situated that the disposition of the action may, as a practical matter, impair or

impede their ability to protect that interest. *See Fed. R. Civ. P.* 24(a)(2). This right is "direct, substantial and legally protectable." *Mt. Hawley Ins. Co. v. Sandy Lake Properties, Inc.*, 425 F.3d 1308, 1311 (11th Cir. 2005) (citation omitted). Specifically, Macon County Investments, Inc. and Reach One, Teach One of America, Inc. (hereinafter "Plaintiffs"), seek to prohibit Sheriff David Warren, sheriff of Macon County, from acting under the First Amended and Restated Rules and Regulations for the Licensing and Operation of Bingo Games in Macon County (hereinafter "First Amended Rules") or the Second Amended and Restated Rules and Regulations for the Licensing and Operation of Bingo Games in Macon County (hereinafter "Second Amended Rules"). (First Amended Comp. at p. 6.)

8. Plaintiffs also seek a declaratory judgment making the First and Second Amended Rules "null and void." (First Amended Comp. at ¶ D.) The abrogation of these rules would directly affect the administrative policies regulating Class B bingo games in Macon County. As legal license holders for Class B bingo games, the Licensed Charities are entitled to participate in the disposition of the Sheriff's substantive, administrative policies that directly affect their legal status. *See U.S. v. South Florida Water Management Dist.*, 922 F.2d 704, 708-09 (11th Cir. 1991), *aff'd in part, rev'd in part* 28 F.3d 1563 (11th Cir. 1994) (noting that a prospective 24(a)(2) intervenor was entitled to intervene because an injunction could "erase the [prospective intervenor's] legally protectable right to participate in the administrative development of . . . standards that apply under state law").

9. The interests of the Class B license holders are not adequately protected by existing parties to the action. *Fed R. Civ. P.* 24(a)(2). As noted above, the Plaintiffs attempt to have this Court declare the First and Second Amended Rules unconstitutional and unenforceable, to enjoin their use hereafter, and to compel the Sheriff to issue a Class B

bingo license to the Plaintiffs. (First Amended Comp. p. 5-6.) Contrarily, the Licensed Charities claim the First and Second Amended rules are constitutional and enforceable. Further, there is no present party to this action which holds or has ever held a Class B bingo license for Macon County. As a result, the Plaintiffs do not directly or adequately represent the interests of the Licensed Charities in regard to regulatory changes affecting the Licensed Charities licenses. *See South Florida Water Management District*, 922 F.2d at 709 -10 (holding that differing views on administrative policy between a party and would-be-intervenor demonstrates inadequate representation); *See Chiles*, 865 F.2d at 1214 (holding that the "possibility" that a party would not sufficiently "emphasize" the position of intervenors meant that adequate representation was not present).

10. Sheriff David Warren, in his official capacity, may not adequately represent the Licensed Charities interests. While the Sheriff's interests in maintaining Class B bingo for proper charitable, educational, or other lawful purposes may be similar to the interests of the Licensed Charities, it may not be identical. *Chiles,* 865 F.2d at 1214-15 (noting would-be detainee intervenors shared similar interest with the Plaintiff, Dade County, to protect the detainees well being, but that this interest was not identical since the County might focus on the people around the prison instead of the prisoners themselves). Here, the Sheriff could choose to emphasize the effects that abrogation of the First and Second Amended Rules might have on Macon County instead of focusing on the effect that the abrogation of those rules could have on the Licensed Charities. *Clark v. Putnam County*, 168 F.3d 458, 461 (11th Cir. 1999) (noting the requirement to show inadequate representation under 24(a) mandates only a showing that the would-be-intervenors "may" be inadequate and that this is a minimal showing).

11. Based on Sheriff Warren's duty to represent all citizens of Macon County, the Sheriff's interests would necessarily differ from the Licensed Charities who seek to represent their individual interests. *Id*. (noting the Putnam County commissioners' stated purpose to represent the entire county "indicates that the commissioners represent interests adverse to the proposed intervenors" since they will also be defending plaintiff's interests).

12. Moreover, the Sheriff's defense, unlike the Licensed Charities, is subject to financial constraints since the County will be paying for the defense. *Id*. at 461-62 (noting there may be an inadequate defense since "the commissioners have a duty to consider the expense of defending the current plan out of county coffers"). Therefore, the Licensed Charities are entitled to intervention as a matter of right pursuant to Rule 24(a), *Federal Rules of Civil Procedure*. *Purcell v. Bank Atlantic Financial Corp.*, 85 F.3d 1508, 1512 (11th Cir. 1996) ("'Once a party establishes all the prerequisites to intervention, the district court has no discretion to deny the motion.'") (quoting *United States v. State of Georgia,* 19 F.3d 1388, 1393 (11th Cir.1994)).

13. In the alternative, the Licensed Charities allege that their claims and the claims of the main action have common questions of law and fact. *Fed. R. Civ. P.* 24(b)(2). The Licensed Charities claim that the First and Second Amended Rules are constitutional and proper under the Alabama Constitution. *See Ala. Const. of 1901*, *amend. 744* (2004). This claim, combined with Plaintiffs' claim that the First and Second Amended Rules are not constitutional or proper under the Alabama Constitution, Comp. p. 5, letters A-D, presents common questions of law and fact. *See Stallworth v. Monsanto Co.*, 558 F.2d 257, 269 (11th Cir. 1977*)* (noting threshold to satisfy the "common question of law of fact"

is liberal and easily satisfied).

14. Moreover, the Licensed Charities' application to intervene will not "unduly delay or prejudice the adjudication of the rights of the original parties." *Fed. R. Civ. P.* 24(b)(2); *see also Walker v. Jim Dandy Co.*, 747 F.2d 1360, 1365 (11th Cir. 1984) (" In exercising its discretion, the court shall consider, among other things, whether the intervention will unduly delay or prejudice the adjudication of the rights of the original parties."). Therefore, the Licensed Charities are entitled to permissive intervention under Rule 24(b) of the *Federal Rules of Civil Procedure. Walker*, 747 F.2d at 1365 (noting 24(b) intervention is permissible when "a party's claim or defense and the main action have a question of law or fact in common and the intervention will not unduly prejudice or delay the adjudication of the rights of the original parties").

15. Indeed, the Licensed Charities state affirmatively that their intervention will not prejudice any of the existing parties to this action and will not delay the expedited discovery schedule previously established by this Court in its Order dated June 26, 2006. The Licensed Charities intend to complete any necessary discovery in accordance with the Court's schedule and, to the extent applicable, to comply with all orders previously entered by this Court prior to their intervention.

16. Attached hereto as Exhibit A is a copy of the initial pleading which the Licensed Charities propose to file if intervention is granted by this Honorable Court.

WHEREFORE, the premises considered, the Licensed Charities respectfully request this Court to enter an Order granting their Motion to Intervene as party Defendants in this action.

Respectfully submitted,

s/John M. Bolton, III
s/Charlanna W. Spencer

Attorneys for Proposed Intervenor/Defendants,
Tuskegee Macon County YMCA,
Little Texas Volunteer Fire Department, Inc.,
Macon County Healthcare Authority,
Macon County RSVP Council, Inc.,
Macon Russell Community Action Agency, Inc.,
and the City of Tuskegee, Alabama

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CERTIFICATE OF SERVICE

I hereby certify that on July 14, 2006, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following:

Kenneth L. Thomas, Esq.
Ramadanah M. Salaam, Esq.
Gary A. Grasso, Esq.
Adam R. Bowers, Esq.
Fred D. Gray, Esq.
Fred D. Gray, Jr., Esq.

And I certify that I have mailed by United States Postal Service the document to the following non-CM/ECF participants:

None.

s/John M. Bolton, III

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